

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K04-S-38**

**PRESTONSBURG INDUSTRIAL CORPORATION**

**APPELLANT**

**V.**

**ORDER NO. K-19361**

**FLOYD COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

The Kentucky Board of Tax Appeals has delegated authority to a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provision of KRS 13B.110. The Appellant filed exceptions to the recommended order. The Board has reviewed the record, the recommended order and the exceptions.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on January 6, 2005 and made the following findings of fact, conclusions of law and recommended disposition.

**FINDINGS OF FACT**

The assessment appeal is for real property located at Cliff Road, Hillside Prestonsburg, Kentucky. The Floyd County Property Valuation Administrator assessed the property at \$50,000.00. The taxpayer or appellant values the property at \$50,000.00. The Floyd County Board of Assessment Appeals values the property at \$50,000.00.

The appellant filed a timely appeal from the local board with the Kentucky Board of Tax Appeals. The assessed value was not appealed. The matter before the board was to determine if the Prestonsburg Industrial Corporation was tax exempt from taxation in accordance with

Section 170 of the Kentucky Constitution.

Mr. Burl Spurlock testified that the corporation has a charitable purpose and is doing public purpose which betters the City of Prestonsburg and the surrounding areas.

The Appellant is classified as a nonprofit corporation; there is no stock issued. Mr. Spurlock testified that there are seven (7) officers and that the Appellant is very flexible to make decisions without having these decisions reviewed by Fiscal Courts or City Councils. It was noted that the Floyd County Fiscal Court has a resolution approved to provide \$60,000.00 to the corporation but the County Judge still has the funds. The corporation also applied for an \$800,000.00 EDA grant and did not qualify.

Ms. Connie Hancock, Floyd County PVA, testified that the Prestonsburg Industrial Corporation does not meet the requirements to be considered as a tax status. She stated that they are not a governmental body, nor an agency of a governmental body, they are not controlled by any governmental body at all.

Under the Kentucky Constitution § 170, in order for real estate to be exempt from taxation the property must belong to a public entity and must be used for public purposes. The Appellant in this case is not a governmental body or an agency of same, nor is it created and controlled by governmental body for the purpose of performing a governmental duty. Thus, the Appellant is not exempt from taxation.

Based upon the evidence in the record, it is the finding of this Board through its hearing Officer, Randall Phillips, that the fair cash value of the property in question is \$50,000.00 and the said property is not exempt from taxation .

### CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Floyd County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Floyd County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Floyd County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officer concludes that the fair cash value of the subject property as of January 1, 2004 is \$50,000.00.

### **RECOMMENDED ORDER**

It is recommended that the June 28, 2004 final ruling of the Floyd County Board of Assessment Appeals is sustained and the real property be assessed at a fair cash value of \$50,000.00 as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

### **FINAL ORDER**

The Kentucky Board of Tax Appeals has considered the record and the exceptions filed and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The June 28, 2004 final ruling of the Floyd County Board of Assessment Appeals is

sustained and the real property be assessed at a fair cash value of \$50,000.00 as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER**

**AND MAILING: June 24, 2005**

**KENTUCKY BOARD OF TAX APPEALS**

**FULL BOARD CONCURRING**

**NANCY MITCHELL**

**CHAIR**